No.

In the Supreme Court of the United States

OCTOBER TERM, 1979

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

STATE OF ALASKA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statues involved	2
Statement	5
Reasons for granting the petition	13
Conclusion	19
Appendix A	1a
Appendix B	13a
Appendix C	15a
Appendix D	26a
Appendix E	34a
Appendix F	42a

CITATIONS

Cases:

Andrus v. *Sierra Club* 442 U.S.	17
Bulova Watch Co. v. *United States*, 365 U.S. 753	16
Harrison v. *PPG Industries, Inc.*, No. 78-1918 (May 27, 1980)	15
NLRB v. *Local Union No. 103, Iron Workers*, 434 U.S. 335	17
Train v. *Colorado Public Interest Research Group*, 426 U.S. 1	14
Udall v. *Tallman*, 380 U.S. 1	5

Cases—Continued Page

United States v. *American Trucking Ass'ns*, 310 U.S. 534 14
United States v. *Clarke*, No. 78-1693 (Mar. 18, 1980) 14
United States v. *Menasche*, 348 U.S. 528.. 16

Statutes:

Alaska Native Claims Settlement Act, Pub. L. No. 92-203, Section 9(d), 85 Stat. 695, 43 U.S.C. 1608(d) 10
Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat 339 *et seq.*:
Section 6(k), 72 Stat. 343 8
Section 28(b), 72 Stat. 351 8
Migratory Bird Treaty Act, Pub. L. No. 88-524, Section 401(e), 78 Stat. 702.... 18
Mineral Leasing Act for Acquired Lands (Act of August 7, 1947, ch. 513, 61 Stat. 914), 30 U.S.C. 351 *et. seq.*:
Section 3, 61 Stat. 914, 30 U.S.C. 352 7
Section 6, 61 Stat. 915, 30 U.S.C. 355 .....4, 7, 16
Mineral Leasing Act of 1920, Section 35, 30 U.S.C. 191 .....2, 4, 7, 8, 9, 10, 11, 15
Wetlands Act of 1961, Pub. L. No. 87-383, 75 Stat. 813 14
Wildlife Refuge Revenue Sharing Act of 1935, ch. 261, Section 401, 49 Stat. 383, 16 U.S.C. (and Supp. II) 715s .....*passim*
Section 401, 16 U.S.C. 715s..... 2, 6, 9
Section 401(a), 16 U.S.C. 715s(a).... 9

Statutes—Continued

	Page
Section 401(a), 16 U.S.C. (Supp. II) 715s(a)	14
Section 401(c)(1), 16 U.S.C. 715s (c)(1)	9
Section 401(c)(1)(A), 16 U.S.C. (Supp. II) 715s(c)(1)(A)	9
Section 401(c)(2), 16 U.S.C. 715s (c)(2)	9
Section 401(e), 16 U.S.C. (Supp. II) 715s(e)	18
Pub. L. No. 85-88, Section 2, 71 Stat. 282	8
Pub. L. No. 87-383, 75 Stat. 813	14
Pub. L. No. 88-523, 78 Stat. 701-702	8, 9
Pub. L. No. 94-579, 90 Stat. 2770-2771	8
Pub. L. No. 95-469, 92 Stat. 1319	9

Miscellaneous:

55 Comp. Gen. 117 (1975)	10, 34a
Exec. Order No. 8979, 6 Fed. Reg. 6471 (1941)	5
25 Fed. Reg. 12598 (1960)	6
45 Fed. Reg. 9562 (1980)	6
45 Fed. Reg. 9565, 9577, 9623, 9631 (1980)	17
H.R. Rep. No. 1753, 88th Cong., 2d Sess. (1964)	15
H.R. Rep. No. 95-1197, 95th Cong., 2d Sess. (1978)	12, 18
B. Miller, *et al.*, Geological Survey Circular 725, *Geological Estimates of Undiscovered Recoverable Oil and Gas Resources in the United States* (1975)	6

Miscellaneous—Continued Page

Pres. Proc. No. 4729 (Feb. 29, 1980), 16 Weekly Comp. of Pres. Doc. 419-420 (Mar. 3, 1980) 6
Public Land Order No. 3400, 29 Fed. Reg. 7094 (1964) 5
S. Rep. No. 1096, 88th Cong., 2d Sess. (1964) 15
S. Rep. No. 95-1174, 95th Cong., 2d Sess. (1978) 12, 18

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The Solicitor General, on behalf of the Secretary of the Interior, the Secretary of the Treasury, and the Comptroller General of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-12a) is not yet reported. The opinion of the district court (App. C, *infra*, 15a-25a) is reported at 436 F. Supp. 288.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 13a-14a) was entered on February 5, 1980. On April 29, 1980, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to June 2, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether revenues from federal oil and gas and other mineral leases covering reserved public lands in federal wildlife refuges in Alaska are to be distributed according to the formula established by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, which allocates 25% of the revenues to the counties in which such lands are located and reserves 75% for federal purposes related to the Act, rather than according to the formula established by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which provides that 90% of such revenues be paid to the State of Alaska and 10% be covered into the United States Treasury.

STATUTES INVOLVED

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. (Supp. II) 715s, provides in pertinent part:

> (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from

the sale or other disposition of * * * minerals * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the "system") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

* * * * *

(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided,* That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area. * * *

* * * * *

(g) As used in this section—

* * * * *

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, provides in pertinent part:

> All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C. 1019], shall be paid into the Treasury of the United States; * * * of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: * * *

Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, provides in pertinent part:

> All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands * * *.

STATEMENT

1. The Kenai National Moose Range is part of the National Wildlife Refuge System. It was established in 1941, when Exec. Order No. 8979, 6 Fed. Reg. 6471 (1941), withdrew and reserved approximately two million acres of "public and non-public land" on Kenai Peninsula in Alaska for "use as a refuge and breeding ground for moose."[1] This Court, in *Udall* v. *Tallman*, 380 U.S. 1, 12-23 (1965), held that Exec. Order No. 8979 did not withdraw any public land in the Kenai Range from federal oil and gas leasing.

Federal oil and gas leases were first issued on reserved public land in the Kenai Range in 1957 and 1958 (R. 223, 930).[2] Since that time, substantial revenues have been generated by oil and gas leases there, including some $57 million between 1966 and 1976 (R. 957). Since 1976, when the present suits were filed, funds representing a 90% share of the oil and gas leasing revenues have been placed in an escrow account pending the outcome of this litigation (R. 230). We are advised by the Department of the Interior that the account now contains nearly $18 million (including small sums from other reserved refuge lands; see note 3, *infra*).

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[1] On May 22, 1964, Public Land Order No. 3400, 29 Fed. Reg. 7094-7095 (1964), enlarged the Kenai Range by approximately 40,115 acres of public land withdrawn and reserved "from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws."

[2] "R." refers to the Clerk's Record filed in the court of appeals.

The Kenai Range is, at present, the only refuge in Alaska generating oil and gas revenues, but we are advised by the United States Geological Survey that additional volumes of recoverable oil and gas are believed to underlie some of the 17 other existing wildlife refuges, including the Arctic National Wildlife Range established in 1960 (25 Fed. Reg. 12598 (1960)) (renamed the William O. Douglas Arctic Wildlife Range by Pres. Proc. No. 4729 (Feb. 29, 1980), 16 Weekly Comp. of Pres. Doc. 419-420 (Mar. 3, 1980)), as well as substantial areas recently withdrawn by the Secretary of the Interior for management as wildlife refuges (45 Fed. Reg. 9562-9726 (1980)). See generally B. Miller, *et al.*, Geological Survey Circular 725, *Geological Estimates of Undiscovered Recoverable Oil and Gas Resources in the United States* 4-5, 16-17, 24-25, 33 (1975).[3]

2. In 1957, when the first leases were issued covering land in the Kenai Range, distributions of revenues from lands in federal wildlife refuges were governed by one or more of at least three statutes. The Wildlife Refuge Revenue Sharing Act, enacted in 1935 (Section 401 of the Act of June 15, 1935, ch. 261, 49 Stat. 383), now codified at 16 U.S.C. (Supp. II) 715s, governed distribution of revenues

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[3] Oil and gas revenues from reserved lands within wildlife refuges in states other than Alaska are minimal, the total for the "Lower 48" for the period 1966-1975 amounting to less than $50,000 (Affidavit of Lynn A. Greenwalt, Director of the United States Fish and Wildlife Service, printed as an appendix to petitioners' brief in the court of appeals (pages 41-43)).

from, *inter alia*, timber, hay, and gravel, on refuge lands, whether they were reserved public lands or acquired lands. It provided that 25% of such revenues should be paid to the county or counties in which such refuge lands were located, the remainder being retained by the federal government.

The terms of that statute also applied to oil and gas revenues on acquired lands within such refuges, by virtue of Sections 3 and 6 of the Mineral Leasing Act for Acquired Lands (Act of August 7, 1947, ch. 513, 61 Stat. 914, 915), now codified at 30 U.S.C. 352 and 355. Section 3 of the latter statute, 30 U.S.C. 352, authorized leasing of specified minerals, including oil and gas, on lands acquired by the United States, and Section 6, 30 U.S.C. 355, provided that such acquired land leasing revenues "be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." In the case of federal wildlife refuges, this meant that the revenues were apportioned between counties and the federal government as provided in the Wildlife Refuge Revenue Sharing Act.

Oil and gas leasing revenues covering reserved public lands in such refuges remained subject to the distribution provisions of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which governed distribution of leasing revenues on public lands generally, without regard to whether they were within wildlife refuges or not.

The lands on which leases were issued in the Kenai Range were reserved lands. In 1957, under the Mineral Leasing Act, as amended by Pub. L. No. 85-88, Section 2, 71 Stat. 282, the Territory of Alaska was to receive 52½% of mineral leasing revenues, including oil and gas revenues. When Alaska was admitted as a State, in 1959, it retained this 52½% share of such revenues, and became entitled to an additional 37½% share, representing the portion allocated to each state out of the mineral leasing revenues from reserved public lands within its borders. The State of Alaska thus received a total of 90% of such revenues, with the remainder going into the United States Treasury as miscellaneous receipts.[4]

In 1964, Congress amended the Wildlife Refuge Revenue Sharing Act in a number of respects. Pub. L. No. 88-523, 78 Stat. 701-702. One change was the addition of the term "minerals" to the list of sources

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[4] Section 6(k) of he Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 343, provided that provisions of the Act repealing portions of certain existing statutes were not to deprive the State of rights to revenues enjoyed by the Territory of Alaska under the Mineral Leasing Act; and Section 28(b) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 351, amended Section 35 of the Mineral Leasing Act by changing the term "Territory" to "State" in the clause that allocated a 52½% share of mineral revenues to Alaska.

Other states at that time received only a 37½% share of mineral leasing revenues on reserved public lands within their borders, with a 52½% share going to the federal Reclamation Fund. Amendments to the Mineral Leasing Act in 1976 raised the share of states other than Alaska to 50%. Pub. L. No. 94-579, 90 Stat. 2770-2771.

for refuge revenues that are to be distributed according to the allocation provisions of the statute. Pub. L. No. 88-523, Section 401(a), 78 Stat. 701, 16 U.S.C. 715s(a). Another change was the addition of provisions differentiating, with respect to the formula for payments to counties, between acquired lands and reserved public lands. The formula by which counties received 25% of revenues from lands within refuges was, however, retained for reserved lands (Section 401(c)(1), 78 Stat. 701).[5]

2. In 1975, the Director of the Fish and Wildlife Service, who is responsible for administration of the National Wildlife Refuge System, including the Kenai Range, sought the opinion of the Solicitor of the Interior Department on whether the 1964 amendment to 16 U.S.C. 715s changed the requirements of the Mineral Leasing Act "as to receipts from oil and gas leases on refuges created by withdrawal of public lands" (App. D, *infra*, 26a). Despite the 1964 amendment, the Department of the Interior had continued to follow the distribution formula of Section 35 of the Mineral Leasing Act as to revenues from

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[5] An additional payment option was provided with respect to acquired lands (Section 401(c)(2), 78 Stat. 701). Counties whose borders enclosed wildlife refuge land acquired by the United States in fee were to receive "three-fourths of one per centum of the cost of the areas * * *" or 25% of resource revenues collected from the lands, whichever was greater. In 1978, this provision was further amended to include a third option, Pub. L. No. 95-469, 92 Stat. 1319, 16 U.S.C. (Supp. II), 715s(c)(1)(A). The amendments did not change the distribution formula for reserved lands in wildlife refuges.

the Kenai Range (R. 297).[6] The Solicitor responded that the 1964 amendment to 16 U.S.C. 715s "irreconcilably" conflicted with Section 35 of the Mineral Leasing Act as to the treatment of oil and gas revenues from reserved public land within the National Wildlife Refuge System; and he concluded that because the 1964 amendment to 16 U.S.C. 715s was the more recent statute, it superseded the contrary provisions of Section 35 of the Mineral Leasing Act with respect to the distribution of mineral leasing revenues from lands within wildlife refuges (App. D, *infra*, 26a-33a).

The Solicitor then asked the Comptroller General whether he concurred in this conclusion. The Comptroller General issued a concurring decision on July 29, 1975. 55 Comp. Gen. 117 (App. E, *infra*, 34a-41a). The State of Alaska objected to this decision and requested reconsideration. On June 11, 1976, the Comptroller General, after reviewing a second memorandum from the Solicitor which reached the same conclusion as the first, as well as another objection by the State, affirmed his original decision (App. F, *infra*, 42a-58a).

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[6] Kenai Range oil and gas revenues were distributed 90% to the State of Alaska, and 10% to the General Fund of the United States Treasury. After enactment on December 18, 1971, of Section 9(d) of the Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 695, 43 U.S.C. 1608(d), the computation of the State (90%) and federal (10%) shares was made on net revenues after the deduction of the amount (2% of gross royalties) paid into the Alaska Native Fund.

3. In 1976, Kenai Peninsula Borough, a political subdivision of Alaska, sued the Secretary of the Interior, seeking a declaration that 16 U.S.C. 715s controlled the distribution of oil and gas revenues on reserved public land within the Kenai Range, and an order requiring the Secretary to pay the Borough 25% of such revenues, to account for past payments of such revenues made to the State of Alaska, and to recover such past payments for Kenai's benefit (R. 14-23). Immediately thereafter, the State of Alaska sued the Secretary, the Comptroller General, and the Secretary of the Treasury seeking a declaration that distribution of oil and gas revenues on reserved public land within the National Wildlife Refuge System was at all times governed by Section 35 of the Mineral Leasing Act (R. 1-9). The State also sought a resumption of the 90% payments out of such revenues to the State, and the invalidation of the two decisions of the Comptroller General as "of no legal effect" (R. 9). The district court ordered consolidation of the two lawsuits.

On August 18, 1977, the district court granted summary judgment for the State of Alaska, holding that Section 35 of the Mineral Leasing Act controlled the distribution of oil and gas revenues from reserved public land within the Kenai Range both before and after the 1964 amendment to 16 U.S.C. 715s and that the Wildlife Refuge Revenue Sharing Act controlled distribution of only those "mineral" revenues derived from acquired refuge lands.

The court of appeals affirmed, concluding that the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act "must be read to apply only to acquired refuge lands and not to reserved refuge lands" (App. A, *infra*, 11a). In reaching this conclusion, the court acknowledged that the plain meaning of the language of the statute "fairly brings the Kenai Moose Range oil and gas revenues within its scope" (*id.* at 7a), but it concluded that application of the plain meaning rule was inappropriate in the circumstances of this case, where it would produce a conflict with another statute, the Mineral Leasing Act. In the absence of any legislative history in the 1964 amendments to 16 U.S.C. 715s evincing a congressional intent to repeal, in part, the Mineral Leasing Act, the court refused to find what it termed a repeal by implication (App. A, *infra*, 7a-12a).[7] In addition, the court stated, without discussion, that this inter-

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[7] As the court of appeals noted (App. A, *infra*, 10a n.6), 16 U.S.C. 715s underwent another major revision in 1978, in the course of which the House proposed revising subsection (a) so as to ensure that the statute would be construed, at least in the future, as applying to oil and gas revenues from reserved lands, as well as from acquired lands. H.R. Rep. No. 95-1197, 95th Cong., 2d Sess. 1, 8 (1978). That clarifying provision was, however, removed by the Senate Committee on Environment and Public Works, which decided to leave the statute in essentially the same form. The Committee explained that it was "inappropriate to legislate on this matter pending a determination by the court and [that the Committee] takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95-1174, 95th Cong., 2d Sess. 4, 8 (1978).

pretation would avoid "other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act (*id.* at 11a). The court also drew support for its conclusion from the Interior Department's adherence to the Mineral Leasing Act formula in disbursing revenue to the State from the leases covering the Range until 1975.

REASONS FOR GRANTING THE PETITION

The court of appeals has construed the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, in a manner that disregards its plain language, renders a specific amendment to it meaningless, and is unwarranted by its legislative history. An important federal interest is threatened; for, if the decision is left standing, very substantial revenues, both past and future, will be diverted from the uses directed by Congress in the Wildlife Refuge Revenue Sharing Act and distributed according to a markedly different scheme that does not advance the purposes of that Act.

1. The Wildlife Refuge Revenue Sharing Act applies, without qualification, to "all revenues received by the Secretary of the Interior from the sale or other disposition of * * * minerals * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife

Service." 16 U.S.C. (Supp. II) 715s(a). The conclusion of the court of appeals that the Act applies only to those mineral revenues collected from *acquired lands* has no basis in its language. Indeed, the different treatment of acquired lands and reserved public lands in subsection (c) merely underscores the fact that subsection (a), which identifies the revenue sources to be disbursed under succeeding provisions, must apply to revenues from both categories of lands.

While an inquiry into the meaning of a statute need not end with a determination of the meaning apparent on its face (see, *e.g.*, *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 10 (1976); *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543-544 (1940)), "this is a case in which the meaning of [the] statute may be determined by the admittedly old-fashioned but nonetheless still entirely appropriate 'plain meaning' canon of statutory construction." *United States* v. *Clarke*, No. 78-1693 (Mar. 18, 1980), slip op. 1. What is more, in this instance, the court of appeals was unable to find any expression of intent in the relevant legislative materials that contradicted the literal meaning of the language enacted by Congress, and candidly conceded that "the legislative history of the statute does not resolve the issue" (App. A, *infra*, 9a).[8]

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[8] The chief impetus for the 1964 amendments was the need to assure adequate payments to counties in which the United States was seeking to acquire lands for wildlife refuges—in particular wetlands—since, under the Wetlands Act of 1961, Pub. L. No. 87-383, 75 Stat. 813, the governor of a state or

Attempting to make a virtue of necessity, the court adverted to the *absence* of any comment concerning the addition of the term "minerals," and concluded (*id.* at 8a-12a) that, since a statute granting counties a share of mineral leasing revenues from reserved public lands within wildlife refuges would conflict with the terms of the disbursement provision of the Mineral Leasing Act, 30 U.S.C. 191, Congress could not have enacted such a measure without specifically noting the "conflict" and expressing in the legislative history of the newer statute an intent to "repeal" the older one. Such reliance on the absence of comment on unambiguous statutory language is improper. *Harrison* v. *PPG Industries, Inc.*, No. 78-1918 (May 27, 1980), slip op. 13. Moreover, construing 16 U.S.C. 715s to apply to minerals on reserved public lands does not "repeal" the Mineral Leasing Act; it simply limits the application of its revenue allocation provision to public lands outside of wildlife refuges. Finally, invoking the rule disfavoring repeals by implication, in the present context, violates other equally accepted principles of statutory construction—(1) the "plain meaning" rule,

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an appropriate state agency could veto acquisitions effected under that statute. S. Rep. No. 1096, 88th Cong., 2d Sess. 5 (1964); H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2 (1964). Therefore the greatest part of the comments on the proposed bills focused on the provisions for assuring payments to counties in which land acquired for refuges would produce little, if any, revenues. But nowhere in the reports or hearings did any member of Congress express the view that revenues from reserved public lands that came within the literal terms of the Act were to be excluded from its coverage.

as indicated above; (2) the rule that in the case of a statutory conflict, the more specific statute (here, a statute applicable to reserved land within wildlife refuges) prevails over the more general one (here, a statute applicable to reserved lands generally) (*Bulova Watch Co.* v. *United States*, 365 U.S. 753, 758 (1961)); and (3), perhaps most significantly, the rule that all words of a statute are to be given effect and none is to be treated as mere surplusage. *United States* v. *Menasche*, 348 U.S. 528, 529 (1955).

As we have already said (page 7, *supra*), in 1964, when the word "minerals" was added to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, mineral leasing revenues derived from wildlife refuges created out of lands acquired by the United States were already subject to the Act's disbursement provisions by virtue of Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355. Thus, unless mineral leasing revenues on *reserved* public lands within wildlife refuges were to be brought within the disbursement provisions of 16 U.S.C. 715s, there was simply no point to adding "minerals" to the list of revenue sources. The court of appeals acknowledged the effect of the Mineral Leasing Act for Acquired Lands, but instead of recognizing the fact that this made the addition of "minerals" to 16 U.S.C. 715s unnecessary where acquired lands were concerned, it simply commented that there was thus "no conflict with the Wildlife Refuge Revenue Sharing Act" (App. A, *infra*, 3a n.3). While it is true that duplicative laws are not

conflicting laws, it is surely unwise to aim for that result in construing a statute.[9]

2. The allocation of very substantial sums is at stake in this case.[10] As explained above, 90% of some $57 million generated by leasing on the Kenai Range between 1966 and 1976, and an additional $17 mil-

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[9] The court of appeals also relied on the Secretary of the Interior's practice, between 1964 and 1975, of distributing oil and gas leasing revenues from reserved lands according to the terms of Section 35 of the Mineral Leasing Act. But that practice, of course, was not self-validating, and it has been ended following a careful and reasoned consideration of the relevant statutes by the Secretary (App. D, *infra*), with the concurrence of the Comptroller General (Apps. E and F, *infra*). This Court has recognized that reversals by agencies of earlier statutory interpretations are entitled to judicial deference when such reversals follow a "detailed and comprehensive" reevaluation. *Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979). See also *NLRB* v. *Local Union No. 103, Iron Workers*, 434 U.S. 335, 351 (1978).

[10] Our estimates take no account of possible revenues from the leasing of minerals other than oil and gas because we are advised by the Department of the Interior that substantial revenues are not expected to be generated by leasing with respect to other minerals on wildlife refuges in the foreseeable future. Minerals leasable under the Mineral Leasing Act include coal, phosphate, sodium, potassium, oil shale, native asphalt, and bituminous rock. The Secretary's recent withdrawals of land for wildlife refuges in Alaska have, however, provided that they are "withdrawn from settlement, sale, location, entry or selection under the operation of the public land laws, including but not limited to the mining laws (30 U.S.C. Chap. 2) * * *"; special provision is made for oil and gas leasing "when the Secretary determines such leasing to be compatible with the purposes of the Refuge." See, *e.g.*, 45 Fed. Reg. 9565, 9577 (Innoko National Wildlife Refuge), 9623, 9631 (Selawik National Wildlife Refuge) (1980).

lion representing subsequent escrowed revenues are indisputably involved. Given the indications of oil and gas reserves in other sections of Alaska either presently maintained as wildlife refuges or proposed for such use in the future, the price of leaving standing the decision of the court of appeals may well be the future diversion of hundreds of millions of dollars from allocations serving the purposes of the Wildlife Refuge Revenue Sharing Act.[11] Because such a windfall for the State is plainly contrary to the intent of Congress, manifested in clear and unambiguous language, and because consideration of the question by another circuit is not likely in the foreseeable future (see page 6, note 3, *supra*), this Court should now intercede.

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[11] The 1964 amendment to the Act provided that any amount remaining in the fund created by wildlife refuge revenues after the prescribed payments had been made to the counties could be used by the Secretary for the management of the refuge system and for the enforcement of the Migratory Bird Treaty Act (Section 401(e), 78 Stat. 702). The Act now provides that any amount remaining after the required payments have been made is to be transferred to the Migratory Bird Conservation Fund for acquisition of areas suitable for migratory bird refuges. 16 U.S.C. (Supp. II) 715s(e). In recent years, however, total receipts have amounted to less than the sum necessary to make all county payments as prescribed, since payments to counties enclosing acquired refuge lands are not necessarily calculated as a percentage of revenues from those lands and thus may exceed revenues produced. See H.R. Rep. No. 95-1197, 95th Cong., 2d Sess. 4-5 (1978); S. Rep. No. 95-1174, 95th Cong., 2d Sess. 2 (1978).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 1980

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 77-3265

Civil No. A-76-94

[Filed Feb. 5, 1980]

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF-CROSS-COMPLAINANT-APPELLANT

vs.

STATE OF ALASKA, PLAINTIFF-APPELLEE

and

CECIL D. ANDRUS, Secretary of the Interior, ET AL.,
DEFENDANT-APPELLEE

No. 78-1443

Civil No. J-76-3

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF-CROSS-COMPLAINANT-APPELLEE

vs.

STATE OF ALASKA, PLAINTIFF

and

CECIL D. ANDRUS, Secretary of the Interior, ET AL.,
DEFENDANT-APPELLANT

Appeal from the United States District Court
for the District of Alaska

Before: CHAMBERS and TANG, Circuit Judges, and THOMPSON,* District Judge

OPINION

TANG, Circuit Judge.

These consolidated actions were brought to determine the proper distribution of revenues from federal oil and gas leases on reserved public lands within the Kenai National Moose Range, Alaska, a part of the National Wildlife Refuge System. Appellants herein, Kenai Peninsula Borough (Kenai) and the Secretary of the Interior, Secretary of the Treasury, and the Comptroller General (federal defendants) seek distribution pursuant to the Act of June 15, 1935, as amended, 16 U.S.C. § 715s (1976)[1] (Wildlife Refuge Revenue Sharing Act). The State of Alaska (Alaska) seeks distribution pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 191. The district court, in a decision reported at 436 F.Supp. 288 (D. Alas. 1977), granted summary judgment in favor of Alaska.

We affirm.

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* Honorable Bruce R. Thompson, United States District Judge for the District of Nevada, sitting by designation.

[1] References to § 715s are to the section as it existed in 1976. In 1978, the section was amended in several respects. The substance of these changes has no impact on the issue in this case; but some of the paragraphing of the section has been altered. *But see* footnote 6 *infra*.

FACTUAL AND STATUTORY BACKGROUND

The opinion of the district court should be consulted for a more detailed rendering of the legislative background. A brief account will suffice here. The Kenai National Moose Range was created in 1941 by the reservation of land in the public domain.[2] The Mineral Leasing Act is the statute governing mineral leases on reserved public lands generally. Under the Act, from 1957 and 1958 until the events leading to this lawsuit, Alaska received 90% of the net revenues from oil and gas leases in the Kenai Range, while the remaining 10% accrued to the U.S. Treasury. 30 U.S.C. § 191.[3]

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s governs the distribution of revenues only from lands in the National Wildlife Refuge System. It provides that revenues from refuge lands go into a separate fund, and that these revenues then

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[2] Reserved public domain lands are public domain lands, never in state or private ownership, which have been set apart and reserved for a specific purpose. Public lands set apart for wildlife refuges are often described simply as reserved lands. Land in the Wildlife Refuge System may also be acquired. Acquired lands are those granted or sold to the United States by a state or citizen.

[3] The Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, governs the distribution of revenues from oil and gas leases on acquired lands. It provides that lease revenues "be distributed in the same manner as prescribed for other receipts from the land affected by the lease." *Id.* § 355. Thus, for mineral leases on acquired lands there is no conflict with the Wildlife Refuge Revenue Sharing Act.

be divided between the local county in which the land is situated (25%) and the Wildlife Refuge Fund (75%). Prior to 1964, the distribution schemes of the Mineral Leasing Act and the Wildlife Refuge Revenue Sharing Act were not in conflict because the list of revenue sources in the Wildlife Refuge Revenue Sharing Act did *not* include the sale or other disposition of *minerals* on the refuge lands.

Amendments in 1964, however, made significant alterations in the distribution scheme of 16 U.S.C. § 715s(c) and added the word "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a). Although the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act created a *prima facie* conflict between the allocation schemes of the two acts for mineral revenues on reserved refuge land, the legislative history of the amendments shows no awareness of the significance of the change. The legislative history is concerned exclusively with the proposed alterations within the distribution scheme of the Wildlife Refuge Revenue Sharing Act. Moreover, the Interior Department, which is charged with the administration of these provisions, over the years since 1964 until 1975 gave no studied attention to the conflict and continued to distribute the Kenai Refuge oil and gas lease revenues to Alaska according to the Mineral Leasing Act.

In 1975, in response to a request by the Director of the Fish and Wildlife Service, the Solicitor of the Interior Department issued an opinion that the 1964

addition of "minerals" to the Wildlife Refuge Revenue Sharing Act should control the distribution of oil and gas revenues on reserved refuge land, superseding the contrary provisions of the Mineral Leasing Act. The Comptroller General concurred in this conclusion. 55 Comp. Gen. 117. After objection by Alaska and reconsideration by the Solicitor and the Comptroller General, the Comptroller reaffirmed the original conclusion. Thereafter these lawsuits were initiated. All federal distribution of Kenai Moose Range oil and gas revenues ceased at the end of 1976, pending the outcome of this litigation.

ISSUES

Upon appeal, on behalf of Kenai and the federal defendants, it is argued that the addition of the term "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a) and the scheme of distribution contemplated in 16 U.S.C. § 715s(c) are of clear enough application that, in the absence of an expression of contrary meaning in the legislative history, the statute would be construed literally. If the amended version of § 715s is construed literally, it conflicts with the Mineral Leasing Act. And both because it is the later of two conflicting statutes and because it is the more specific of a specific and a general statute, the Wildlife Refuge Revenue Sharing Act should control the distribution of these oil and gas revenues. The appellant also argues that the Interior Department and the Comptroller Gen-

eral 1975 opinions interpreting the statutes are entitled to deference.

Alaska, on the other hand, argues that "minerals" in the Wildlife Refuge Revenue Sharing Act should be read restrictively so that the term applies only to mineral revenues on acquired refuge lands and not to those from reserve refuge lands. Alaska cites certain incidents in the legislative history of the 1964 amendments and claims they show that Congress did not intend that the addition of "minerals" would alter prior law. Alaska also urges (1) that the appellants' literal interpretation is contrary to the Interior Department's interpretation in practice from 1964 to 1975 when revenues were distributed according to the Mineral Leasing Act; (2) that in 1976 Congress reenacted the Alaska distribution section of the Mineral Leasing Act, without modification or comment, after 11 years of agency interpretation and at a time when clarification of the statute would otherwise have been sought, thereby showing congressional intent that the Mineral Leasing Act cover *all* reserved land; and (3) that a literal construction here causes potential interpretive difficulties with other statutes, chiefly the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, 48 U.S.C. Note preceding § 21, and the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1608.

DISCUSSION

The difficulty here results from the addition of but one word, the term "minerals," to a catalog list of revenue sources in 16 U.S.C. § 715s(a). The parties agree that this addition creates an apparent conflict between the two statutory provisions involved. The touchstone to the resolution of the conflict is to ascertain the intent of Congress: by the addition of the term "minerals" in 16 U.S.C. § 715s(a), what effect, if any, did Congress intend to have on the distribution of mineral revenues on reserved refuge lands under 16 U.S.C. § 715s(c) or 30 U.S.C. § 191?

Appellant Kenai, relying on *Caminetti* v. *United States*, 242 U.S. 470 (1917), argues that 16 U.S.C. § 715s is clear and unambiguous on its face and therefore that resort to legislative history or other extraneous sources is inappropriate. *See also United States* v. *Wilson*, 591 F.2d 546, 547 (9th Cir. 1979); *Adams* v. *Morton*, 581 F.2d 1314, 1320 (9th Cir. 1978), *cert. denied*, 440 U.S. 958 (1979). It is true that under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within its scope, if § 715s is read in isolation.

However, when a plain meaning reading of a statute brings that statute into conflict with another statute and disrupts a preexisting network of statutory provisions, it is appropriate to look to the legislative history for help in ascertaining congressional

intent. *See Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 9-10 (1976); *Church of Scientology* v. *U.S. Department of Justice*, —— F.2d ——, Slip Op. 696, 700-02 (9th Cir. Nov. 8, 1979). *Cf. Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978); *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965) (ability of courts to adopt restricted meaning of word when usual meaning leads to absurd results); *League to Save Lake Tahoe, Inc.* v. *Trounday*, 598 F.2d 1164, 1173 (9th Cir. 1979) (resort to legislative history proper when words of statute are not conclusive as to legislative intent); *Get Oil Out! Inc.* v. *Exxon Corp.*, 586 F.2d 726, 729 (9th Cir. 1978) (court obligated to construe federal statutes so that they are consistent with each other). This is especially true when the face of the statute gives no indication of a congressional intent to repeal existing legislation or of a purpose, the accomplishment of which might require superseding prior statutes.

Unfortunately, the legislative history of the 1964 amendments to 16 U.S.C. § 715s sheds no direct light on the issue here. The principal purpose of the 1964 amendments was to improve the distribution scheme for revenues from acquired refuge land, so that local authorities would more likely approve of federal acquisition of wildlife refuge land. *See* H.R. Rep. No. 1753, 88th Cong., 2d Sess., *reprinted in* [1964] *U.S. Code Cong. & Ad. News* 3265. Accordingly, the addition of "minerals" occurred without comment; and

potential conflict with the Mineral Leasing Act went unremarked. Of course, the mere fact that Congress was silent when one would have expected comment does not necessarily mean that an alteration in revenues from mineral leases was not intended by Congress.[4] Similarly, details in other portions of the legislative history from which there can be consistently implied an assumption that the prior revenue distribution would not be altered, are not in themselves dispositive.[5]

Since a literal reading of § 715s creates apparently unanticipated and non-productive difficulties with other statutes and the legislative history of the statute does not resolve the issue, it is nearly impossible to determine with confidence what was Congress' intent in passing the 1964 amendments.[6]

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[4] *Cf. Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U.S. 4, 11 (1942) ("The search for significance in the silence of Congress is too often the pursuit of a mirage.").

[5] The district court discusses these incidents. 436 F.Supp. at 292. Alaska also relies on these incidents. However, those items of legislative history show, at most, only that Congress had no express awareness that the addition of "minerals" might alter prior law. It is too far a jump to conclude further that Congress positively intended no change. *But see* footnote 7 *infra*. These incidents of legislative history in themselves cannot be dispositive of the issue here because they are connected only tenuously to the question of the intended distribution scheme and cannot be read in effect as a statement of congressional intent.

[6] Ideally, in most situations where a statute has a potential for conflict with another prior statute, either the statute

The appellants urge us to find that the later Wildlife Refuge Revenue Sharing Act has repealed by implication the earlier Mineral Leasing Act as to revenues from refuge lands. Repeal by implication, however, is not favored; if possible, statutes should be read so as to give effect to each of them. *Morton* v. *Mancari*, 417 U.S. 535, 549-51 (1974); *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936); *United States* v. *Jones*, 607 F.2d 269, 272 (9th Cir. 1979); *United States* v. *Burnett*, 505 F.2d 815, 816 (9th Cir. 1974), *cert. denied*, 420 U.S. 966 (1975). This is the preferred course especially when, as here, the purpose and legislative history of the later act

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itself or the legislative history will contain enough indication of purpose and congressional intent that the matter can be resolved there. In fact, the question of the meaning of "minerals" in § 715s and its application to mineral lease revenues on reserve refuge land was before Congress in 1978. In the course of a major reworking of § 715s, it was proposed to clarify this question so that oil and gas revenues from refuge lands were to be governed by § 715s, and not by 30 U.S.C. § 191, at least from the date of the 1978 enactment. Finally, however, the Senate Committee on Environment and Public Works noted that the issue was currently being determined in the instant case and preferred to leave the statute in its original form, pending the outcome of this litigation. "The Committee believes it is inappropriate to legislate on this matter pending a determination by the court, and takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S.Rep. No. 95-1174, 95th Cong., 2d Sess. 4, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* 5003, 5006. *See also Id.* at 8, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* at 5009-10 (additional views).

gives no clear foundation for an implied repeal.[7] There can be no implied repeal unless the intention of the legislative body to repeal is clear. *Morton* v. *Mancari, supra; United States* v. *Georgia-Pacific Co.*, 421 F.2d 92, 102 (9th Cir. 1970). If possible, we seek an interpretation of the later act which will harmonize it with the Mineral Leasing Act and cause least disruption to the other related statutes.

The stated purpose of the 1964 amendments to the Wildlife Refuge Revenue Sharing Act was to facilitate the acquisition of lands from local owners, with the approval of local governing authorities. The focus of attention, therefore, was the treatment under the Act of *acquired* lands. Accordingly, we hold that the 1964 addition of "minerals" to the Wildlife Refuge Revenue Sharing Act must be read to be applied only to acquired refuge lands and not to reserved refuge lands. This interpretation is warranted because to hold otherwise is to find an implied repeal when Congress has expressed no clear intent. It also harmonizes the operation of the two statutes and gives effect to both. Further, it avoids other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act. This interpretation also draws support from the fact that the department construed the statute this way in practice between

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[7] The few items of legislative history which do exist, *see* footnote 5 *supra*, give support to the position that Congress did not clearly intend an implied repeal. But even without them, such intent would still be absent.

1964 and 1975, which practice we are not wont to disregard as merely eleven years of inadvertent statutory construction by the agency.[8]

Because clear congressional intent to effect a repeal by implication has not been shown and because the interpretation of the two statutes adopted by the district court and by this court gives effect to both statutes, the judgment of the district court is affirmed.

Affirmed.

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[8] The department did change its interpretation in 1975. *See* page 3 *supra*. The appellants argue that the department's new interpretation is entitled to the customary deference shown to agency interpretations under *Udall* v. *Tallman*, 380 U.S. 1 (1965). They further argue that the most recent departmental interpretation is equally entitled to deference despite the fact that it is a change of position, citing *Andrus* v. *Sierra Club*, 99 S.Ct. 2335 (1979), and *Montana Power Co.* v. *Environmental Protection Agency*, 608 F.2d 334 (9th Cir. 1979). But in *Sierra Club*, the change of interpretation occurred in the context of a comprehensive change from advisory guidelines to mandatory regulations. And in *Montana Power*, the agency's changed interpretation of *its own regulations* was involved. Here we do not have even a change in an agency's regulations implementing a statute. Rather it is a case of the agency's interpretation of a single term in a statute. In this context the term is neither a term of art nor one whose interpretation requires that deference be shown to the expertise of those charged with administering the operation of the statute. *Cf. General Electric Co.* v. *Gilbert*, 429 U.S. 125, 142-43 (1976) (less deference to administrative guidelines when they conflict with earlier agency pronouncements).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

77-3265
No. 78-1443

DC CV A-76-94)
J-76-3) JAH

KENAI PENINSULA BOROUGH, Municipal Corp.,
PLAINTIFF/CROSS-COMPLAINANT/APLT.

vs.

STATE OF ALASKA, PLAINTIFF/APPELLEE

CECIL D. ANDRUS, Secretary of Interior, ET AL.,
DEFENDANT/APPELLEE

KENAI PENINSULA BOROUGH, Municipal Corp.,
PLAINTIFF/CROSS-COMPLAINANT/APLE.

vs.

STATE OF ALASKA, PLAINTIFF

vs.

CECIL D. ANDRUS, Secretary of Interior, ET AL.,
DEFENDANTS/APPELLANTS

Appeal from the United States District Court
for the District of Alaska

(Anchorage & Juneau)

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska (Anchorage & Juneau) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A TRUE COPY

ATTEST 13 May 1980

RICHARD H. DEANE
Clerk of Court

by: /s/ Oscar Tagle
Deputy Clerk

Filed and entered February 5, 1980

APPENDIX C

UNITED STATES DISTRICT COURT
D. ALASKA

Civ. Nos. A76-94 & J76-3

KENAI PENINSULA BOROUGH, PLAINTIFF

v.

CECIL D. ANDRUS, DEFENDANT

STATE OF ALASKA, PLAINTIFF

v.

CECIL D. ANDRUS, ET AL., DEFENDANTS

Aug. 17, 1977

Charles K. Cranston, Gallagher, Cranston & Snow, Anchorage, Alaska, for Kenai Borough.

Avrum Gross, Atty. Gen., State of Alaska by Frederick Boness, Asst. Atty. Gen. Juneau, Alaska, for plaintiff.

G. Kent Edwards, U.S. Atty., Anchorage, Alaska, for defendant.

MEMORANDUM AND ORDER

VON DER HEYDT, Chief Judge.

THIS CAUSE comes before the court on cross motions for summary judgment. The precise issue before the court is whether the distribution of reve-

nues from mineral leases within the Kenai National Moose Range is governed by the Mineral Leasing Act, 30 U.S.C. § 191, or 16 U.S.C. § 715s.

The Kenai National Moose Range was created by the reservation of land in the public domain.[1] From statehood until the events leading to this lawsuit the State of Alaska received mineral leasing revenues from the Kenai National Moose Range, pursuant to 30 U.S.C. § 191. Under that statute the State received 90% of the lease revenues, with the remainin 10% accruing to the United States as miscellaneous receipts. On July 29, 1975, the Comptroller General issued an opinion stating that mineral leasing receipts from wildlife refuges created by reservation, as well as receipts from wildlife refuges created by acquisition, were governed by the distribution scheme of 16 U.S.C. § 715s. The Comptroller General determined that 16 U.S.C. § 715s, as amended in 1964, required distribution of 25% of the net receipts from mineral leases on reserved refuges to the counties in which the refuge was located, with the remaining 75% distributed to the wildlife refuge fund. The State of Alaska objected to the Comptroller General's opinion, and upon reconsideration the original position was affirmed by the Comptroller General in an opinion issued on June 11, 1976.

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[1] In general, reserved lands are lands which were never in state or private ownership while acquired lands are those granted or sold to the United States by a state or citizen. *Wallis* v. *Pan American Pet. Corp.*, 384 U.S. 63, 65 n.2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966).

On May 14, 1976, Kenai Peninsula Borough, the borough in which Kenai National Moose Range is located, filed suit against the Secretary of Interior seeking distribution of mineral leasing receipts in conformity with 16 U.S.C. § 715s. On July 8, 1976, the State of Alaska filed suit against the United States seeking distribution as provided by 30 U.S.C. § 191. The actions were consolidated on August 12, 1976, with jurisdiction founded on 28 U.S.C. § 1331 (a). The facts are undisputed, and the controversy is purely one of statutory interpretation.

Before proceeding with the disposition of the motions it is necessary to outline the interplay of the statutes involved in this suit. As noted above, the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181, 191, requires the United States to distribute 90% of mineral leasing receipts from public domain lands to the states. *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63, 65 n. 2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966). Revenues from mineral leases on acquired lands of the United States are distributed under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, which requires mineral lease receipts to

> "be paid into the same funds or accounts in the Treasury and . . . distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355.

Prior to the 1964 amendment, 16 U.S.C. § 715s, at least as interpreted by the State of Alaska and the Comptroller General, did not apply to mineral lease

receipts on reserved public lands.[2] However, all non-mineral activity receipts from refuges were distributed under 16 U.S.C. § 715s. In summary, prior to 1964, receipt from activities on wildlife refugees were distributed in the following manner:

1. All non-mineral activity receipts were distributed 25% to the counties and 75% to a federal wildlife refuge fund;
2. Mineral leasing receipts from reserved lands were distributed 90% to the State of Alaska and 10% to a federal fund for miscellaneous receipts;
3. Mineral leasing receipts from acquired lands were distributed like refuge receipts from non-mineral activity—25% to the counties and 75% to the wildlife refuge fund.

In 1964, 16 U.S.C. § 715s(a) was amended to read:

> Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, *minerals*, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the

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[2] Prior to 1964, 16 U.S.C. § 715s(a) provided that 25% of money received by the United States "from the sale or other disposition of surplus wildlife, or sale of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, . . . shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, . . ."

> basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. (emphasis added).

At the same time, the distribution scheme was changed to differentiate between receipts from reserved lands and receipts from acquired lands. 16 U.S.C. §§ 715s(c)(1) and 715s(c)(2). The position of the United States and Kenai Peninsula Borough is that 16 U.S.C. § 715s(a), 714s(c)(1), as amended, requires that 25% of the mineral leasing receipts from reserved lands be distributed to Kenai Peninsula Borough. In contrast, the State of Alaska would have this court interpret the word "minerals" restrictively to apply only to acquired lands so that mineral leasing receipts from a wildlife reserve created by withdrawal of land from the public domain would be distributed 90% to the State of Alaska and 10% to the miscellaneous fund.

The Kenai Peninsula Borough argues that prior to 1964 16 U.S.C. § 715s governed the distribution of mineral leasing receipts from public land. Specifically, Kenai Peninsula Borough argues that the language "other privileges" was intended to include mineral leasing receipts from reserved and acquired land. This interpretation ignores the fact that mineral

leasing receipts from reserved land within wildlife refuges generated prior to 1964 were in fact distributed under 30 U.S.C. § 191. Moreover, it ignores the fact that the government continues to adhere to its construction of 16 U.S.C. § 715s as it read prior to amendment.[3] Such a long-standing, contemporaneous, and practical interpretation by the executive officers charged with administration of a statute is strong evidence of the meaning of a statute. *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 116, 67 S.Ct. 1129, 91 L.Ed. 1375 (1947). *See generally*, Sutherland, Statutory Construction § 49.03, at 233 (4th ed. 1972). The borough cites obscure, often ambiguous evidence of a contrary administrative interpretation. The ambiguous material is consistent with the State of Alaska's position, and to the extent that the evidence contradicts the state's interpretation it pales in the face of the actual fact of distribution. Neither the legislative history nor the policy of management of the refuges requires a different result.

Rejection of Kenai Peninsula Borough's interpretation of 16 U.S.C. § 715s(a) as it read prior to the

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[3] On June 11, 1976, the Comptroller General held: "The Attorney General states, and we agree, that prior to the 1964 amendment, oil and gas lease revenues were not included in the coverage of 16 U.S.C. § 715s and that to the extent the counties benefited from oil and gas lease revenues from wildlife refuges prior to 1964, it was only with respect to acquired lands, by virtue of 30 U.S.C. § 355, *supra*." Comptroller General B-118678, at 3 (June 11, 1976). See also Comptroller General B-118678, at 1-2 (June 11, 1976).

1964 amendment, of course, is only the beginning of the inquiry. The primary issue is whether 16 U.S.C. § 715s(a), as amended in 1964, should be construed literally or restrictively. The general rule of statutory construction is that there is no occasion for construction where the language is clear and unambiguous and does not lead to absurd or impracticable results. *Caminetti* v. *United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed. 442 (1917). *See generally* Sutherland, Statutory Construction, § 46.01, at 48 (4th ed. 1972). In determining whether a statutory term is clear and unambiguous, the court generally looks to the Act itself to make a prima facie determination. *See Foley Bros.* v. *Filardo*, 336 U.S. 281, 284, 69 S.Ct. 575, 93 L.Ed. 680 (1949). *See generally* Sutherland, Statutory Construction, § 46.05, at 55-56 (4th ed. 1972). In the case at bar, there is nothing in 16 U.S.C. § 715s which would support a restrictive construction of the word "minerals". Thus, a literal approach of statutory construction would dictate an expansive definition including both reserved and acquired lands.

However, there are limits to literalism. All statutes must be interpreted in light of their statutory purpose, and a literal reading which would be contrary to the legislative purpose is to be avoided if the statute can be read in a manner consistent with the words and purpose. *Hagger Co.* v. *Helvering*, 308 U.S. 389, 394, 60 S.Ct. 337, 84 L.Ed. 340 (1940). *See generally* Sutherland, Statutory Construction § 46.07, at 65 (4th ed. 1972). Where a literal in-

terpretation would result in applications beyond the purpose for which the statute was enacted, courts construe the language restrictively in order to give effect to the spirit of the statute. *See generally* Sutherland, Statutory Construction, §§ 54.04, at 358, 54.06, at 368, 46.07, at 66 (4th ed. 1972).

The primary purpose of the 1964 amendment of 16 U.S.C. § 715s was undoubtedly to facilitate the acquisition of waterfowl habitat areas. The Secretary of the Interior was authorized to acquire such land, but only if the governor of the state in which the land was located approved the acquisition. The governors generally refused to approve acquisitions because when land was acquired it was withdrawn from the tax rolls. Local communities were deprived of property tax revenues and would not benefit from the 25% distribution scheme if the land was not producing revenue. Consequently, the distribution scheme for acquired wildlife refuge land, 16 U.S.C. § 715s(c) had to be amended to facilitate acquisition. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 1 (1964); S. Rep. No. 1096, 88th Cong., 2d Sess. 2 (1964), U.S. Code Cong. & Admin. News 1964, p. 3265.

While the purpose of amending 16 U.S.C. § 715s (c) is clear, there is little evidence of the purpose behind adding "minerals" to the product list of 16 U.S.C. § 715s(a). If the court accepts Kenai's view this silence is surprising given the substantial reallocation of revenues which would result if the amendment did effect distributions from reserved lands. If the addition of "minerals" was intended to alter the

distribution, one would expect mention of this fact in discussions which focused on 16 U.S.C. § 715s(a), and one would expect vigorous objection from the states. Cf. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 77 (1964), U.S. Code Cong. & Admin. News 1964, p. 3265. More Equitable Payments to Counties Having Wildlife Refuges: Hearings on S. 179, S. 1363, S. 1720, and S. 2498 Before Committee on Commerce, 88th Cong., 2d Sess. 77 (1964). Of course, "the search for significance in the silence of Congress is too often the pursuit of a mirage." *Scripps-Howard Radio* v. *Comm'n*, 316 U.S. 4, 11, 62 S.Ct. 875, 880, 86 L.Ed. 1229 (1942). The State of Alaska's restrictive reading, however, is supported by more than the mere silence of Congress. First, if Congress had intended to change the distribution scheme for mineral leasing revenues from reserved lands, the estimated payments to counties after the 1964 amendment would have substantially increased over past payments. However, no increase in payments to Kenai Peninsula Borough was projected in the cost estimate considered by Congress. The 1963 payments from the Kenai wildlife refuge receipts were $1,768. The estimated payments in 1963, assuming the 1964 amendment had been in force in 1963, were identical. H.R. Rep. No. 1793, 88th Cong., 2d Sess. 3 (1964); S. Rep. No. 1096; 88th Cong., 2d Sess. 13 (1964).

These estimated distributions were estimates for both acquired and reserved lands. This is evident from the inclusion of payments from the Kenai wildlife refuge in the projections. There is also explicit

recognition of this fact in footnote 3 to the cost estimate.

Secondly, Congressional intent is evident in the Congressional expectation that the wildlife refuge fund would decrease if the 1964 amendment was adopted. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 12 (1964). If mineral leasing receipts from public lands were intended to be distributed in conformity with 16 U.S.C. § 715s(c)(1), the wildlife refuge fund would have been substantially increased, and not reduced, as 75% of the mineral leasing receipts from reserved lands would have been reallocated to the wildlife refuge fund. Finally, it should be observed that the administrative agency charged with distribution of the fund distributed mineral lease revenues from public land for more than ten years after amendment as provided by 30 U.S.C. § 191. Only recently has the Secretary taken a contrary position.

Thus, this court concludes that the word "minerals" as used in the 1964 amendment of 16 U.S.C. § 715s(a) must be read restrictively rather than literally. The 1964 amendment of 16 U.S.C. § 715s (a) was not intended to amend 30 U.S.C. § 191 to require distribution of mineral leasing receipts from reserved land in accordance with 16 U.S.C. § 715s (c). To hold otherwise would require an application of literalism in violation of the apparent Congressional purpose. The interpretation adopted does not make "minerals" superfluous as 16 U.S.C. § 715s does continue to govern the distribution of mineral lease

receipts from acquired land. Cf. Sutherland, Statutory Construction § 46.06, at 63 (4th ed. 1972). Moreover, this construction is consistent with the rule of construction disfavoring implied amendments. Sutherland, Statutory Construction § 22.13, at 139 (4th ed. 1972).[4]

Accordingly, IT IS ORDERED:

1. THAT the State of Alaska's motion for partial summary judgment is granted;

2. THAT the cross-motions for summary judgment filed by Kenai Peninsula Borough and the United States are denied.

DATED at Anchorage, Alaska, this 17th day of August, 1977.

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[4] Because of this result the court is not required to determine: Whether section 317 of the Federal Land Policy and Management Act, in amending the Mineral Leasing Act of 1920, impliedly amended the 1964 amendment to 16 U.S.C. § 715s. Nor does the court need determine whether the 1964 amendment to 16 U.S.C. § 715s constitutes a breach of compact between the State and the United States.

APPENDIX D

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

Memorandum

To: Director, United States Fish and Wildlife Service

From: Solicitor

Subject: Oil and Gas Receipts from Public Domain Lands Withdrawn for Refuges

You have requested the opinion of this office as to whether the 1964 amendment (Act of August 30, 1964, 78 Stat. 701) to the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. § 715s, as amended), changed the requirements of the Mineral Leasing Act, 30 U.S.C. § 181, *et seq.*, as to receipts from oil and gas leases on refuges created by withdrawals of public lands. Specifically, you inquired whether the 1964 amendment requires that such receipts enter the discrete "refuge receipts account" contemplated by the amendment, or whether, instead, they must pass through the disposition detailed in the Mineral Leasing Act. In addition, you asked whether the answer to the foregoing question would be changed either by the fact that the United States' mineral rights on certain acquired, as opposed to withdrawn, refuge

lands were not acquired simultaneously with the lands (the mineral rights having always been in the United States), or by the fact that it is common practice to include a provision in refuge withdrawals explicitly excluding the Mineral Leasing Act from the effect of the withdrawal.

We conclude that the 1964 amendment does, in fact, require a different disposition of revenues for all refuge lands—regardless of the manner of the refuges' creation—than that specified in the Mineral Leasing Act, and that the 1964 amendment supersedes the Mineral Leasing Act. We conclude that neither the manner in which refuge mineral rights were acquired, nor references to the Mineral Leasing Act in withdrawal orders, affect this supersedure. The requirements of the Mineral Leasing Act, insofar as they relate to revenues from leases, are:

> All money [except, as the section later provides, moneys from "petroleum reserves"] received from sales, bonuses, royalties, and rentals of public lands under the provisions of [the Mineral Leasing Act] shall be paid into the Treasury of the United States . . . (30 U.S.C. § 191).

This provision also outlines the required disposition of such funds: 37½ percent of the receipts goes to the State within the boundaries of which the public lands are located; 52½ percent goes to the reclamation funds, except in the case of Alaska, where this amount goes to the state; and the remainder goes to the Treasury as miscellaneous receipts.

In contrast, 16 U.S.C. § 715s, since its amendment in 1964, requires that:

> . . . all revenues received by the Secretary of the Interior for the sale or other disposition of . . . minerals . . ., during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. (16 U.S.C. § 715s(a)).

Section 715s goes on to state that, at the end of each fiscal year, there shall be paid from this discrete fund, out of the fiscal year's receipts—

> . . . (1) to each county in which reserved public lands in an area of [the National Wildlife Refuge] System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System [with provision being made for multi-county refuges]. . .;
>
> (2) to each county in which areas of the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas [as periodically adjusted in terms of current value, and exclusive of the cost of improvement on the lands]. . ., or (B) [the amount the county would receive under subsection (1), above], whichever is greater. . . (16 U.S.C. § 715s(c) (emphasis supplied)).

On the basis of these statutory provisions, then, the question is: under which of the two systems did Congress intend oil and gas revenues from refuges created by withdrawal out of public lands to be distributed?

It is observed that the 1964 amendment to section 715s is a more recent Congressional statement than any contained in the Mineral Leasing Act. The Mineral Leasing Act's phrasing regarding "the public lands" dates from the Act's initial passage on February 25, 1920, and the provisions dealing with the state of Alaska date from July 7, 1958, when the Act was most recently amended.

It is an accepted rule of statutory construction that when statutes deal with the same subject they are—

> so far as reasonably possible construed to be in harmony with each other. But if there is an irreconcilable conflict between the new provision and prior statutes relating to the same subject matter, the new provision will control, as it is the later expression of the legislature. A. Sutherland, *Statutes and Statutory Construction*, Vol. 2A, § 51.02 (4th ed. C. Dallas Sands 1973).

The question thus becomes whether the two statutes can be harmonized, or whether, insofar as federal receipts from the Refuge System are concerned, there is an "irreconcilable conflict" between them.

Upon reviewing the language and the legislative history of the 1964 amendment of section 715s, we have concluded that the conflict is irreconcilable. We be-

gin by noting that if revenues from those refuges which have been created by withdrawal of lands from the public domain were to be distributed under the scheme established by the Mineral Leasing Act, an entire section of the 1964 amendment—section 715s (c) (1)—would have no meaning or function whatever. The sole function of that section is to create a different payment scheme, for refuges which exist on "reserved public lands," than the payment system which is established for refuges on "acquired" lands by section 715s(c)(2). Since refuges can only be established on lands which have been condemned, purchased, or received by donation—all of which are clearly "acquired" lands, and therefore governed by section 715s(c)(2)—or on lands withdrawn from the public domain for refuge purposes, "reserved" lands can only mean "withdrawn" lands. And, since "it is an elementary rule of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute" (A. Sutherland, *supra*, at Vol. 2A, § 46.06), section 715s(c)(1) must be given some meaning as regards the receipts from "minerals" on "reserved lands," which it purports to distribute. The only way such meaning could exist without, at the same time, an irreconcilable conflict with the Mineral Leasing Act also existing would be to interpret the reference to "minerals" in section 715s as not comprehending oil and gas.

On its face, we submit that there would not appear to be ambiguity as to whether the word "minerals"

comprehends oil and gas. At the fringes of the word's coverage certain doubts might arise, as to whether a substance is or is not a mineral; but we believe common understanding would place oil and gas under the "minerals" heading.

If doubt should exist, however, the legislative history of the 1964 amendment make it quite clear that Congress clearly intended the term to include both oil and gas. Prior to 1964, the list of words in section 715s which described the rights or the property whose disposition that section governed was nearly identical in appearance to the section's present list. The pre-1964 list read:

> . . . from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges . . .

The list presently reads:

> . . . from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand or gravel, from other privileges or from leases from public accommodations or facilities . . .

At the outset, the fact that the 1964 additions to the list were clearly not wholesale bespeaks a particular reason, clearly understood by Congress, for each addition. It is difficult to argue, then, that the word "minerals" could have been added, and used instead of a different, more limited word, without deliberate Congressional consideration of its reach. (Instructive here is the fact that one of the offered

alternatives to the bill (S. 1363) that became the 1964 Act did not include the word "minerals" in the list.) (S. 1720, 88th Congress, 2nd Session).

Other evidence in the legislative history also suggests the conclusion that oil and gas reserves were intended to fall within "mineral" revenues. In the report of the House Committee on the Merchant Marine and Fisheries on the 1964 amendment (H.R. Rept. No. 1753, 86th Cong., 2nd Session 1964) the Committee noted that it was possible—for reasons wholly unrelated to the scope of the word "minerals"—for the impending Supreme Court treatment of *Leiter Minerals, Inc.* v. *United States*, 329 F.2d 85 (5th Cir. 1963), to result in the United States (and the counties, under the amendment's receipts-sharing plan) being deprived of revenues from oil and gas leases from the Sabine Refuge. Since the Government could not be deprived of oil and gas revenues unless, except for the court case, it would receive them through the operation of the word "minerals," this concern reflects a clear belief, on the part of the House Committee, that when the Committee used the word "minerals," oil and gas were included.

Indeed, at the time of the 1964 amendment this apparently was also the interpretation accepted by the Department of the Interior. Secretary Udall, in describing the types of revenue-generating functions whose potential would be trapped by the refuge receipts account, spoke of the "oil" which was present at many refuge sites. (Hearings on S. 1363 before

the Senate Committee on Commerce, 88th Congress, 2nd Session, at 20 (1964)).

In our opinion, therefore, the 1964 amendment irreconcilably conflicts with the Mineral Leasing Act, as to the treatment of oil and gas revenues from withdrawn refuges.

From this it must be followed that, as to mineral receipts, it is irrelevant whether a refuge withdrawal order fails to include the Mineral Leasing Act within its explicit effect. The 1964 amendment applies to all refuges, a withdrawal order which had as its aim the establishment of a refuge with a receipt distribution system different than that required by the amendment would be, to the extent of such difference, the futile attempt of a federal agency to repeal a federal statute.

For similar reasons, the fact that mineral rights in an acquired refuge were already held by the United States when the refuge was acquired is irrelevant to the requirement that receipts enter the discrete account. The terms of the 1964 amendment do not tie the account's operation to a particular method of refuge acquisition. The amendment looks to the situation which exists after acquisition: if after acquisition, the lands form part of the National Wildlife Refuge System, and are primarily administered by the United States Fish and Wildlife Service, all receipts to which the United States is entitled from the disposition of oil and gas occurring within the refuge must enter the refuge receipts account.

APPENDIX E

[SEAL]

THE COMPTROLLER GENERAL
OF THE UNITED STATES
Washington, D.C. 20548

DECISION

FILE: B-118678 DATE: July 29, 1975

MATTER OF: Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System.

DIGEST: Receipts from oil and gas leases on lands within the National Wildlife Refuge System, and administered by the Fish and Wildlife Service, whether the lands were made part of the System by acquisition or by withdrawal from the public domain, are required to be disposed of pursuant to 16 U.S.C. § 715s (1970) rather than pursuant to the Mineral Leasing Act which generally prescribes disposition of receipts from leases of mineral rights in the public lands, because, to the extent there is a conflict between the requirements of the statutes, the more recent one is controlling.

This decision is in response to a request from the Solicitor, Department of the Interior, asking whether we concur in the conclusion of a memorandum prepared by his office, that receipts from oil and gas leases on wildlife refuges created by withdrawals of

public lands are required to be reserved in the discrete refuge receipts account," established pursuant to 16 U.S.C. § 715s (1970) and distributed according to the scheme established thereby, rather than to be covered into the Treasury pursuant to the Mineral Leasing Act, 30 U.S.C. § 191, and distributed as are other mineral lease receipts under the latter act.

The question arises as a result of the 1964 amendment to 16 U.S.C. § 715s. Prior to the amendment, section 715s provided generally that 25 percent of the net proceeds from the sale or other disposition of "* * * surplus wildlife, or of timber, hay, grass or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges * * *" on national wildlife refuges was to be paid annually by the Secretary of the Treasury to the counties in which the refuges are located, to be used for public schools and roads. Refuges established under the Migratory Bird Conservation Act, or any other law, proclamation, or executive order, and administered by the United States Fish and Wildlife Service, were included.

Pub. L. No. 88-523, 78 Stat. 701, August 30, 1964, amended 16 U.S.C. § 715s to read in pertinent part as follows:

> "(a) *Beginning with the next full fiscal year* and *for each fiscal year thereafter, all revenues received* by the Secretary of the Interior *from the sale or other disposition of* animals, timber, hay, grass, or other products of the soil, *minerals,*

shells, sand, or gravel, from other privileges, * * * *during each fiscal year* in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, *shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed.* * * * The National Wildlife Refuge System (hereafter referred to as the 'System') includes those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

* * * * *

"(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds *shall be expended solely for the benefit of public schools and reads as follows*:

> "(1) *to each county in which reserved* public lands in an area of the System are situated, an amount equal *to 25 per centum of the net receipts* collected by the Secretary from such reserved public lands in that particular area of the System * * *; and
>
> "(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, *either* (A) *three-fourths of 1 per centum of the cost of the areas,* * * * or (B) *25 per centum of*

> *the net receipts* collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive."

Among other changes which it made to section 715s, *the 1964 amendment added minerals to the list in subsection (a)*, quoted above, of sources of revenues in the refuge system *to be reserved in a separate fund in the Treasury* (referred to as the "refuge receipts account") *and to be distributed in accordance with subsection* (c).

The *Mineral Leasing Act*, originally enacted in 1920 (Act of February 25, 1920, ch. 85, 41 Stat. 437, as amended, 30 U.S.C. § 181 *et seq.* (1970)) authorizes the Secretary of the Interior to lease all lands subject to disposition thereunder which are known or believed to contain oil or gas deposits. 30 U.S.C. § 226 (1970). Lands subject to disposition include lands owned by the United States containing deposits of oil. 30 U.S.C. § 181. All moneys received from sales, bonuses, royalties, and rentals of public lands under the Mineral Leasing Act are required to be paid in to the Treasury. *Of those amounts, 37½ percent is to go to the State within which the lands are located for roads or schools; 52½ percent is to be paid into the fund established under the Reclamation Act* (43 U.S.C. § 371 *et seq.* (1970)) (*except in the case of Alaska, where this amount goes to the*

State). The remainder is to be credited to miscellaneous receipts.

The question presented is therefore whether receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be disposed of pursuant to the scheme of the Mineral Leasing Act or to that of the 1964 amendment of 16 U.S.C. § 715s. We conclude that disposition of receipts from mineral leases, including oil and gas leases, on lands within the National Wildlife Refuge System, is governed by 16 U.S.C. § 715s, and not by the Mineral Leasing Act.

We agree with the draft memorandum of the Solicitor that oil and gas are included in the term "minerals" in 16 U.S.C. § 715s, as amended. As the memorandum points out, the common understanding of the term "minerals" is that it includes oil and gas. Moreover, if there were any doubt that oil and gas were so included in this case, it would be resolved by the legislative history of the 1964 amendment. It is clear from that history that it was expected that the national wildlife refuge system would be the recipient of revenues from oil and gas. Thus, in reporting on S. 1363, 88th Congress, the bill which was the derivative source of the 1964 amendment to 16 U.S.C. § 715s, the House Committee on Merchant Marine and Fisheries discussed the potential effect of a pending Supreme Court decision which could deprive the United States of oil and gas revenues from a refuge in Louisiana on the income of the wildlife refuge system. H. Rep. No. 1753, 88th Cong.

2d Sess. 11. As the Solicitor's draft memorandum points out,

> "* * * Since the Government could not be deprived of oil and gas revenues unless, except for the court case, it would receive them through the operation of the word 'minerals,' this concern reflects a clear belief on the part of the House Committee, that when the Committee used the word 'minerals,' oil and gas were included."

In view of the requirement of 16 U.S.C. § 715s that revenues received by the Secretary for the sale or other disposition of minerals in connection with the national wildlife refuge system be disposed of as prescribed thereunder, and of the conclusion that oil and gas are minerals within the meaning of that section, there is an apparent conflict between section 715s and the Mineral Leasing Act, which prescribes a scheme for disposition of moneys received from leases of oil and gas on public lands different from that under 16 U.S.C. § 715s. The general rule of statutory construction in such circumstances is that in case of a conflict between a new provision and prior statutes relating to the same subject matter, the new provision, as the later expression of the legislature, is controlling. In accordance with this rule, we conclude that Congress intended the disposition of receipts from minerals on wildlife refuges to be governed by 16 U.S.C. § 715s, as amended. We note that to hold otherwise, as the Solicitor's memorandum points out, would be to deprive section 715s(c)

(1) of title 16, prescribing a specific scheme of distribution for revenues from refuges created by reservation, of any meaning.

The Solicitor's memorandum notes that "refuge withdrawal orders," the administrative actions whereby lands are withdrawn from the public domain for refuge purposes, have commonly included a provision explicitly excluding the Mineral Leasing Act from the effect of the withdrawal. For example, Public Land Order 3999 (31 Fed. Reg. 6907 (1966)) provides for the addition to a wildlife refuge of certain lands by withdrawing them—

> "* * * from all forms of appropriation under the public land laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws * * *."

The question was raised whether this fact would change the foregoing conclusion.

If given effect, the exclusion from the withdrawal order of leasing under the mineral leasing laws could result in the distribution of proceeds of mineral leases on the withdrawn lands according to the Mineral Leasing Act rather than 16 U.S.C. § 715s. In view of our conclusion that the law requires proceeds of mineral leases on lands withdrawn from the public domain in order to become part of the national wildlife refuge system to be distributed according to 16 U.S.C. § 715s, the Secretary of the Interior is without authority to promulgate public land orders which would result in a different distribution of proceeds.

Accordingly, public land orders which purport to exclude the mineral leasing laws from withdrawal for wildlife refuge purposes are, to that extent, without effect.

Finally, the memorandum addresses the question whether the fact that, at the time of acquisition of certain refuge lands, the United States already held mineral rights with respect to such lands, would have any effect on the requirement for disposition of mineral receipts from such lands. The 1964 amendment to section 715s of title 16 contemplates no distinction in the method of disposition of refuge receipts according to the method of acquisition of the refuge. We agree with the memorandum that, if the lands acquired form part of the National Wildlife Refuge System after acquisition, and are primarily administered by the United States Fish and Wildlife Service, then 16 U.S.C. § 715s applies, requiring that all receipts to which the United States is entitled from the disposition of oil and gas resources within the refuge must enter the refuge receipts account.

/s/ Robert F. Keller
Deputy Comptroller General
of the United States

APPENDIX F

[SEAL]

THE COMPTROLLER GENERAL
OF THE UNITED STATES
Washington, D.C. 20548

DECISION

FILE: B-118678 DATE: June 11, 1976

MATTER OF: Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System—Reconsideration

DIGEST: 1. Upon reconsideration, decision in 55 Comp. Gen. 117 (1975) is affirmed. Receipts from oil and gas leases on lands within National Wildlife Refuge System, and administered by Fish and Wildlife Service, whether lands were made part of System by acquisition or by reservation from public domain, are required to be disposed of pursuant to 16 U.S.C. § 715s (1970) rather than pursuant to Mineral Leasing Act which generally prescribes disposition of receipts from leases of mineral rights in public lands.

2. Alaska Native Claims Settlement Act (ANCSA) of 1971 provides that mineral lease revenues are generally to be distributed as provided in

Alaska Statehood Act. Alaska Statehood Act prescribes no specific scheme of distribution but merely refers to Alaska's share of revenues distributed under Mineral Leasing Act. ANCSA does not adopt scheme of distribution in effect under Mineral Leasing Act in 1959, when Alaska Statehood Act was enacted, and therefore does not repeal by implication portion of 16 U.S.C. § 715s which is apparently in conflict with Mineral Leasing Act.

The Attorney General of Alaska has asked that we reconsider our decision, Matter of Disposition of Receipts From Leases of Oil and Gas Rights Within National Wildlife Refuge System, 55 Comp. Gen. 117 (1975). In that decision, we concluded that receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be distributed pursuant to 16 U.S.C. § 715s(c) (1970), rather than pursuant to the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.* (1970). Upon consideration of the arguments of the Attorney General and the comments of the Solicitor of the Department of the Interior, we conclude that our decision must be affirmed.

Until it was amended in 1964, the Act of June 15, 1935, ch. 261, § 401, 49 Stat. 383, as amended, the statute which prescribed the disposition of receipts from "privileges" granted on national wildlife refuges, required that 25 percent of the receipts go to the counties in which the refuges were located. No

distinction was made between refuges on land reserved from the public domain and refuges acquired by purchase. The remaining 75 percent of revenues was appropriated by a permanent indefinite appropriation for the management of the refuges. H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2-3 (1964).

Although the statute originally spoke of the sale of various specified items and "other privileges," it did not mention minerals, oil, or gas, and it was not interpreted to include receipts from oil and gas leases. Mineral lease receipts were disposed of pursuant to section 35 of the Mineral Leasing Act, 30 U.S.C. § 191 (1970) even where the leases were of lands in wildlife refuges, and regardless of whether the lands were reserved from the public domain or acquired. Under that statute, 37½ percent of lease receipts go to the State in which the land is located. Alaska receives an additional 52½ percent which, in the case of the other States, goes to the Reclamation Fund established by 43 U.S.C. §§ 371 *et seq.* (1970).

This system was altered in 1947 by the enactment of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 *et seq.* (1970). That Act provides for disposition of receipts from oil and gas leases on acquired lands "* * * in the same manner as prescribed for other receipts from the lands affected by the lease * * *." 30 U.S.C. § 355 (1970). Thus, after the enactment of the Mineral Leasing Act for Acquired Lands, oil and gas lease receipts from *reserved* wildlife refuge lands remained subject to distribution

pursuant to the Mineral Leasing Act, but oil and gas lease receipts from *acquired* wildlife refuge lands were thereafter to be distributed in the same manner as other receipts from those lands, *i.e.*, in the manner prescribed by the Act of June 15, 1935, which was codified as 16 U.S.C. § 715s.

The 1964 amendment to section 715s of title 16 (the Act of August 30, 1964, Pub. L. No. 88-523, 78 Stat. 701) established a new scheme of distribution for refuge receipts from acquired lands, and added "minerals" to the list in the statute of sources of refuge receipts. We held, in 55 Comp. Gen. 117, *supra*, that the addition of "minerals" meant that, thereafter, receipts from oil and gas leases on refuge lands, whether reserved or acquired, were required to be distributed pursuant to 16 U.S.C. § 715s, as amended, rather than pursuant to the Mineral Leasing Act. The effect of this interpretation with respect to mineral receipts from reserved lands in Alaska is that, instead of 90 percent of the receipts going to the State as was the case under the Mineral Leasing Act, 25 percent is to go to the counties in which the lands are located, with the remainder going to a National Wildlife Refuge Fund.

The Attorney General of Alaska now contends that our interpretation is not correct. Rather, he argues, "* * * Congress intended [by the 1964 amendment of 16 U.S.C. § 715s] to continue the scheme for disposition of funds which was in existence prior to the amendment * * *," and that the 1964 amendment

was intended to apply only to wildlife refuges created from acquired lands.

The Attorney General states, and we agree, that prior to the 1964 amendment, oil and gas lease revenues were not included in the coverage of 16 U.S.C. § 715s, and that to the extent the counties benefitted from oil and gas lease revenues from wildlife refuges prior to 1964, it was only with respect to acquired lands, by virtue of 30 U.S.C. § 355, *supra*. The Attorney General then notes that the only specific discussion of oil and gas lease revenues in the legislative history of the 1964 amendment to 16 U.S.C. § 715s is in the context of revenues from refuges created on acquired lands. He continues:

> "In light of the above, the question presented by the 1964 amendment to section 715s is whether by adding the term 'mineral' Congress intended to confirm the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserve public domain pursuant to the Mineral Leasing Act of 1920; or did Congress intend to change the prior practice, so that oil and gas revenues from all wildlife refuges, regardless of their manner of creation, would be distributed pursuant to section 715s.
>
> "Since distribution of revenues under the Mineral Leasing Act and under section 715s is substantially different, in one case payments being made to States and the Reclamation Fund and in the other to counties and the Wildlife

Refuge Fund, it is highly unlikely that Congress would have intended to repeal the Mineral Leasing Act and replace it with section 715s without any discussion or comment by any of the parties affected. Yet, there is not one single acknowledgement in the legislative history of a change. Indeed, the legislative history makes clear beyond peradventure that none of the parties expected any change in the distribution of revenues from wildlife refuges reserved from the public domain.

"Certainly the Department of the Interior, which sponsored one of the bills which added the term 'minerals,' did not envision any change in the treatment of revenues from reserved wildlife refuges. The Secretary of the Interior testified that 'all of the revenues from refuge operations *on acquired lands* would be placed in a pool for equitable sharing by all the counties in which we have units of the national wildlife refuge system . . . As to *reserved public lands*, there would be no change in the present payment of 25 percent of net receipts from such lands' * * *."

The 1964 amendment to 16 U.S.C. § 715s reads in pertinent part as follows:

"(a) Beginning with the next full fiscal year and for each fiscal year thereafter all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System

that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the 'System') includes those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive or public land order.

* * * * *

"(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

> "(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System * * *; and
>
> "(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. * * *

* * * * *

> "(f) The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States * * *."

The Attorney General thus seeks to explain the addition to 16 U.S.C. § 715s of the reference to minerals as confirming "* * * the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserved public domain pursuant to the Mineral Leasing Act of 1920. * * *" The language of section 715s, as amended, compels a different conclusion. It adds revenues from minerals to the fund established by subsection (a), and provides for distribution of net receipts in the fund, according to the formulas prescribed in subsections (c)(1) and (c)(2), both to counties in which acquired refuges are situated and to those in which reserved refuges are situated. There is no way to read this provision as excepting oil and gas revenues from the fund, but only to the extent they derive from refuges on reserved lands, without doing violence to the plain meaning of the statute.

The Attorney General argues, in effect, that the Mineral Leasing Act, the Mineral Leasing Act for

Acquired Lands, and the 1964 amendment to section 715s, can be interpreted consistently only by assuming that the addition to the list of refuge products in section 715s of "minerals" was intended only to confirm the existing scheme of distribution whereby oil and gas revenues from leases on acquired lands were distributed to the counties by virtue of the Mineral Leasing Act for Acquired Lands. However, this interpretation makes the addition of the term "minerals" in subsections 715s(a) and (f) mere surplusage. The Mineral Leasing Act for Acquired Lands provides that all receipts from leases on acquired lands are to be paid into the same funds and distributed in the same manner as prescribed for other receipts from the lands affected by the lease. Hence, the addition of "minerals" to 16 U.S.C. § 715s was not necessary to continue the existing scheme of distribution with respect to acquired lands.

That is, the Congress could far more clearly have confirmed the existing practice, if indeed that had been its intent, by omitting the reference to "minerals" when it amended section 715s, or by stating explicitly the purported distinction between mineral lease revenues from acquired lands and from reserved lands. Thus, as already noted, the Attorney General's interpretation requires a strained reading of the language of 16 U.S.C. § 715s.

The Attorney General cites several elements of the legislative history of the 1964 amendment to 16 U.S.C. § 715s which, he contends, are consistent with

the view that the bills then under consideration to amend that section were understood at the time to be intended to affect revenues only on acquired lands. The Attorney General contends that the legislative history of the 1964 amendment permits no other conclusion.

The support for the Attorney General's position in the legislative history is neither explicit nor unambiguous. There are no statements in the legislative history to the effect that the addition of the word "minerals" was intended only to confirm the existing scheme of distribution. Rather, the Attorney General relies on statements to the effect that, for example, "* * * As to the reserved public lands within the system, there would be no change in the present payment of 25 percent of net receipts from such lands." H.R. Rep. No. 1753, 88th Cong., 2d Sess. 3 (1964). That statement, however, and other similar ones cited by the Attorney General, do not compel the conclusion that mineral lease receipts are not to be included in net receipts, with respect to reserved lands. The statements cited are consistent with the interpretation that, with respect to reserved lands, the 25 percent rate remains unchanged—in contrast to the situation with respect to acquired lands, where a new alternate rate was to be established—but that mineral receipts, formerly not part of the net receipts, are now to be included therein for both reserved and acquired lands.

In this connection, there are other statements in the legislative history which track the language of the statute:

> "[16 U.S.C. § 715s(a)] provides that * * * all revenues collected by the Secretary of the Interior from the disposition of certain specified products [including minerals] * * * shall be covered into a special fund in the U.S. Treasury to be expended without further appropriation as prescribed in subsection (c) of this section. * * *"
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> * * * * *
>
> "[16 U.S.C. § 715s(c)(1)] would provide for the payment out of net receipts in the fund to each county in which reserved public lands within the national wildlife refuge system are located, an amount equal to 25 percent of the net receipts collected by the Secretary from such reserved lands in that particular area, as is the case under the present law. * * *" H.R. Rep. No. 1753, *supra*, 11.

The reference, at the close of the quotation, to continuing the system in effect "under the present law," may reasonably be understood, as contended above, to refer solely to the preservation of the 25 percent rate applicable to reserved lands receipts, as opposed to the establishment of an alternate ¾ of 1 percent rate applicable to receipts from acquired lands. On that assumption, this portion of the legislative history, and others to like effect, are fully consistent with the view that the amount payable to counties in which reserved wildlife refuge lands are

located is to be 25 percent of net receipts in the fund, including receipts from mineral leases.

As the Attorney General points out, the table which appears in the legislative history to show the effect of the pending bill on refuge revenues, shows no change in payments to Alaska with respect to revenues from refuges on reserved lands, whereas at least one of those refuges produced substantial oil revenues at the time. S. Rep. No. 1096, 88th Cong., 2d Sess. 13-21 (1964). It is not clear to us that the table, inserted to illustrate the particular difficulties the Department was having with respect to acquired lands, necessarily supports the interpretation urged by the Attorney General. If it does, the legislative history is to that extent at odds with the plain language of the statute.

There was considerable discussion in their respective submissions, by the Attorney General and the Solicitor of the Department of the Interior as to whether or not, in such circumstances, the "plain meaning" rule of statutory construction precludes consideration of the legislative history. In our view, even conceding that the legislative history is relevant, for the reasons discussed above, we do not find it to be so unequivocally supportive of the Attorney General's view as to justify us in ignoring the plain language of the statute.

The Attorney General argues further that the effect of the plain meaning rule, even if it were applicable, should in this case be overcome by the rule that implied repeals are disfavored. We said in our

earlier decision that "* * * there is an apparent conflict between section 715s and the Mineral Leasing Act * * *," (55 Comp. Gen. at 119), and that the later enactment, section 715s, was controlling. The Attorney General describes this as a repeal by implication of section 35 of the Mineral Leasing Act, 30 U.S.C. § 191 (1970), and relies on the general rule that repeal by implication is disfavored, citing *Morton* v. *Mancari*, 417 U.S. 535 (1974) and Sutherland, Statutory Construction, §§ 23.09, 23.10 (4th ed. Sands 1972). He asserts that the construction of the 1964 amendment which he urges would avoid the disfavored implied repeal.

The Sutherland treatise on statutory construction, while it states the rule that there is a presumption against repeal by implication, is actually quite critical of the mechanical application of that presumption, pointing out that it runs counter to the real probability that the purpose of new legislation is to change prior law, and in doing so to displace or repeal some part of it. Sutherland, § 23.10. The treatise goes on to say that—

> "* * * It is spurious and question begging to approach the decision of issues as to whether and how much a new law may have repealed provisions of earlier ones with a bias in the form of a presumption which contradicts probability." *Id.*

As to the application of this rule, the treatise makes it clear that it is not an absolute rule but merely a presumption which can be overcome:

> "When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict.
>
> "Conversely, if the inconsistency between a later act and an earlier one is not fatal to the operation of either, the two may stand together and no repeal will be effected." *Id.*, § 23.09 (Footnotes omitted.)

In this case, it appears to us that the construction of the statute urged by the Attorney General is not a reasonable one, and therefore that the presumption against repeal by implication is overcome.

It should be noted that section 35 of the Mineral Leasing Act prescribes the disposition of all moneys received from sales, bonuses, royalties, and rental of public lands under the provisions of that act. Section 715s(f), as added in 1964, allows the Secretary to dispose of minerals on lands within the national wildlife refuge system "* * * upon such terms, conditions, or regulations * * * as the Secretary shall determine to be in the best interest of the United States * * *." Thus, the 1964 amendment to section 715s does not repeal section 35 of the Mineral Leasing Act in its entirety. Rather, its effect is to create an exception to the Mineral Leasing Act scheme of distribution of funds with respect to mineral rights on public domain lands withdrawn for wildlife refuge

purposes, without affecting the application of the Mineral Leasing Act to other public domain lands.

The Attorney General argues, in the alternative, that if the Mineral Leasing Act was impliedly repealed by the 1964 amendment to section 715s, "* * * that repeal would itself have been impliedly repealed and the Mineral Leasing Act reinstated with respect to public lands in Alaska by the Alaska Native Claims Settlement Act of 1971. * * *"

Section 9(d) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), provides as follows:

> "All bonuses, rentals, and royalties received by the United States after December 18, 1971, from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance." 43 U.S.C. § 1608(d) (Supp. IV, 1974).

The Attorney General reads this as an adoption of the scheme of distribution in effect in 1959, when Alaska was admitted into the Union, and he asserts

that this was the scheme of the Mineral Leasing Act, citing section 28(b) of the Statehood Act.

In response to this, the Solicitor states:

> "But the Alaska Statehood Act, § 28(b), does not provide that all federal mineral receipts in Alaska are to be distributed under the Mineral Leasing Act. It merely amends the Mineral Leasing Act to refer to Alaska as a State rather than a Territory. Thus, the Alaska Statehood Act merely refers to Alaska's share of the revenues which *are* distributed under the Mineral Leasing Act; it does *not* make any provisions as to *which* revenues are so distributed. Therefore, there is no apparent conflict between the Alaska Native Claims Settlement Act and 16 U.S.C. § 715s due to the citation in ANCSA of the Alaska Statehood Act * * *" (Emphasis in original.)

We find the Solicitor's argument convincing. Section 28(b) of the Alaska Statehood Act, approved July 7, 1958, Pub. L. No. 85-508, 72 Stat. 339, appears to be merely a technical amendment, intended to conform the Mineral Leasing Act to the new status of Alaska as a State rather than a Territory, without substantive effect. We find no indication that the 1971 Act was intended to revert to the scheme of distribution of mineral lease receipts in effect in 1959. We agree with the Solicitor that section 9(d) of the ANCSA did not effect an implied repeal of the 1964 amendment to 16 U.S.C. § 715s with respect to Alaska.

We recognize that our decision operates to deprive the State of Alaska of revenues. Nevertheless, in view of the foregoing, we are compelled to conclude that the statute should be carried out according to its terms unless expressly modified by subsequent legislative action of the Congress.

/s/ Elmer B. Staats
Comptroller General
of the United States

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